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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 189

BENJAMIN B. FOSTER AND ROBERT R. TODD, EXECUTORS OF THE ESTATE OF ANNA FOSTER FORD, DECEASED, PETITIONERS,

vs.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

PETITION FOR CERTIORARI FILED JULY 2, 1937.

CERTIORARI GRANTED OCTOBER 11, 1937.

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN UNITED STATES COURT OF CLAIMS

No. 42642

ANNA FOSTER FORD, Plaintiff,

v.

THE UNITED STATES OF AMERICA, Defendant

I. PETITION—Filed April 17, 1934

To the Court of Claims of the United States and to the Honorable, the Judges thereof:

The above-named plaintiff by this, her petition, respectfully shows:

[fol. 2]

1

That during the calendar year 1930 your petitioner, Anna Foster Ford, was an unmarried citizen of the United States and a resident of Kansas City, Missouri.

2

That under and pursuant to the provisions of an Act of Congress approved May 29, 1928, and entitled, "An Act to Reduce and equalize taxation, provide revenue, and for other purposes," 45 Stat. 791, petitioner prepared, and on, to-wit, March 12, 1931, duly filed with the Collector of Internal Revenue at Kansas City, Missouri, her income tax return for the calendar year 1930, on a form furnished by the Commissioner of Internal Revenue. The said income tax return filed by your petitioner showed an income tax liability of $850.28, all of which said sum was paid to the Collector of Internal Revenue at Kansas City, Missouri, on, to-wit, March 12, 1931, at the time of the filing of her income tax return for the calendar year 1930.

3

That your petitioner has paid no further sum than the aforesaid $850.28 as and for her income tax liability for the calendar year 1930 and she has received no refund or credit of any part of the taxes paid by her for the calendar year 1930.

[fol. 3]

4

That your petitioner was, on February 11, 1930, the owner of record of 155 shares of a par value of $100.00 per share

of the total of 1500 outstanding shares of the capital stock of the Foster Lumber Company, a Missouri corporation, with its principal place of business in Kansas City, Missouri.

5

That on February 11, 1930, the aforesaid Foster Lumber Company declared a cash dividend of 150 per cent on its capital stock payable on that date to all stockholders of record on that date. Your petitioner received during the calendar year 1930 the amount of $23,250.00 as and for dividends pursuant to such dividend declaration.

6

That your petitioner included the full amount of the aforesaid dividend received by her from the Foster Lumber Company during the calendar year 1930 in the amount of $23,250.00 in her income tax return for that year and paid a tax on the entire amount thereof.

7

That thereafter your petitioner was advised that of the dividend of February 11, 1930, distributed to her the amount of $14,754.22 was non-taxable as being a distribution by the Foster Lumber Company from its earnings or profits accumulated, or increase in value of property accrued, before March 1, 1913.

[fol. 4]

8

That on, or about, July 18th, 1932, and within the period provided for by statute, your petitioner duly filed with the Collector of Internal Revenue at Kansas City, Missouri, a claim for the refund of $712.01 of the taxes paid by her for the year 1930. The claim was predicated on the basis that of the dividends of $23,250.00 received by her from the Foster Lumber Company during 1930 and reported as taxable in their entirety in her income tax return for 1930, the amount of $14,754.22 was paid out of surplus accumulated, or appreciation of land and timber arising, before March 1, 1913, which amount was under the statutes exempt from tax. The Commissioner of Internal Revenue rejected the said claim for refund under date of September 21, 1933.

9

Your petitioner avers that on March 1, 1913, the earnings or profits accumulated, and increase in value of property

accrued, prior to that date of the Foster Lumber Company were in the amount of, to-wit, $3,766,011.25.

10

That the following schedule shows with reference to the Foster Lumber Company in column "A" the period involved, in column "B" the amount of the earnings or profits for that period, in column "C" the amount of the dividend distributed on the last day of that period, and in column "D" the balance of the earnings or profits accumulated subsequent to February 28, 1913:

[fol. 5]

"A" Period	"B" Earnings or Profits	"C" Distributions	"D" Balance of Earnings or Profits Accumulated Since February 28, 1913
Mch. 1, 1913 to Dec. 31, 1913.....	$54,343.62	none	$54,343.62
Jan. 1, 1914 to Feb. 10, 1914.....	3,278.67	$100,000.00	none
Feb. 10, 1914 to Dec. 31, 1914.....	26,639.21	none	26,639.21
Jan. 1, 1915 to Feb. 9, 1915.....	21,800.13	100,000.00	none
Feb. 9, 1915 to Dec. 31, 1915.....	182,226.72	none	182,226.72
Jan. 1, 1916 to Feb. 8, 1916.....	39,684.03	200,000.00	21,910.75
Feb. 8, 1916 to Dec. 31, 1916.....	342,535.85	none	364,446.60
Jan. 1, 1917 to Feb. 13, 1917.....	52,045.48	300,000.00	116,492.08
Feb. 13, 1917 to Dec. 31, 1917.....	389,735.88	none	506,227.96
Jan. 1, 1918 to Feb. 12, 1918.....	36,213.41	300,000.00	242,441.37
Feb. 12, 1918 to June 22, 1918.....	112,089.12	100,000.00	254,530.49
June 22, 1918 to Oct. 2, 1918.....	87,946.85	80,852.20	261,625.14
Oct. 2, 1918 to Dec. 31, 1918.....	78,462.39	none	340,087.53
Jan. 1, 1919 to Feb. 11, 1919.....	58,549.87	300,000.00	98,637.40
Feb. 11, 1919 to Dec. 31, 19[illegible].....	462,686.79	none	561,324.19
Jan. 1, 1920 to Feb. 10, 1920.....	52,019.10	300,000.00	313,343.29
Feb. 10, 1920 to Dec. 31, 1920.....	423,955.68	none	737,298.87
Jan. 1, 1921 to Feb. 8, 1921.....	3,895.62	200,000.00	541,194.59
Feb. 8, 1921 to Dec. 31, 1921.....	33,522.87	none	574,717.46
Jan. 1, 1922 to Feb. 14, 1922.....	23,137.00	200,000.00	397,854.46
Feb. 14, 1922 to Dec. 31, 1922.....	168,794.98	none	566,649.44
Jan. 1, 1923 to Feb. 13, 1923.....	20,213.56	300,000.00	286,863.00
Feb. 13, 1923 to Dec. 31, 1923.....	151,366.63	none	438,229.63
Jan. 1, 1924 to Feb. 12, 1924.....	21,205.20	200,000.00	259,434.83
Feb. 12, 1924 to Dec. 31, 1924.....	163,582.99	none	423,017.82
Jan. 1, 1925 to Feb. 10, 1925.....	36,301.76	250,000.00	209,319.58
Feb. 10, 1925 to Dec. 31, 1925.....	294,951.83	none	504,271.41
Jan. 1, 1926 to Feb. 9, 1926.....	30,813.02	300,000.00	235,084.43
Feb. 9, 1926 to Dec. 31, 1926.....	257,565.25	none	492,649.68
Jan. 1, 1927 to Feb. 8, 1927.....	23,027.83	300,000.00	215,677.51
Feb. 8, 1927 to Dec. 31, 1927.....	198,160.57	none	413,838.08
Jan. 1, 1928 to Feb. 14, 1928.....	35,671.42	250,000.00	199,509.50
Feb. 14, 1928 to Dec. 31, 1928.....	261,049.92	none	460,559.42
Jan. 1, 1929 to Feb. 12, 1929.....	30,493.87	250,000.00	241,053.29
Feb. 12, 1929 to Oct. 10, 1929.....	174,250.71	975,000.00	none
Oct. 10, 1929 to Dec. 31, 1929.....	60,261.71	none	60,261.71
Jan. 1, 1930 to Feb. 11, 1930.....	22,143.03	225,000.00	none
Feb. 11, 1930 to Dec. 31, 1930.....	174,983.96	none	174,983.96